

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 96 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE S.M.SONI and

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GOMTIBEN WD/O D P PATEL

Versus

CHOGAJI SAGHAJI KALAJI SOLANKI

Appearance:

MR VIJAY H PATEL for Petitioners
MR RAJNI H MEHTA for Respondent No. 1, 4
NOTICE SERVED for Respondent No. 3

CORAM : MR.JUSTICE S.M.SONI and
MR.JUSTICE H.R.SHELAT

Date of decision: 13/08/98

ORAL JUDGEMENT (S.M. Soni, J.)

Appellants-original-claimants have filed this appeal against the judgment and award dated 1st April 1980 passed by Motor Accident Claims Tribunal No.3, Ahmedabad, in Motor Accident Claim Application No. 117

of 1979 asking for enhancement of the award by additional claim of Rs. 49,000/-. Learned advocate, Mr. Vijay Patel before effective hearing of this appeal, requests the Court to allow him to reduce the claim to Rs. 10,000/-. We, accordingly, allow to amend the claim in appeal. The appeal therefore now survives for a claim of Rs. 10,000/- only.

2. The facts, which led the Claim Application are as under;

Dahyabhai Purshottambhai Patel, predecessor of claimants, started from his residence at about 6.00 a.m. on 27th March 1979 to report for duty in a textile mill on his bicycle. When he was proceeding towards Sabarmati and having entered the limits of Sabarmati Village, one truck bearing No. GTX 5586 loaded with coal dust came from opposite direction. The said truck was driven by opponent No.1 rashly and negligently and without taking necessary precautions for driving and swerving on road he went on his wrong side of the road and knocked down the cyclist, i.e., Dahyabhai who was on his correct side of the road. It appears that he died instantaneously and the heirs had filed the claim, wherein the Tribunal awarded an amount of Rs. 55,370/- after holding him guilty of contributory negligence to the extent of 15%.

3. Appellants have challenged the award on the grounds, namely that the Tribunal has not properly appreciated the income of the deceased and has also erred in holding the deceased negligent to the extent of 15%.

4. Heard learned advocate, Mr. Patel. So far as the question of quantum is concerned, the Tribunal has rightly held that the salary of deceased was Rs. 435/plus variable D.A. and adhoc rise in view of the certificate of 19th July 1979. Taking into consideration the liability to maintain the number of family members, the Tribunal has come to the conclusion that the amount of Rs. 108/- from the salary of Rs. 484/- would be spent by the deceased for himself and the datum figure arrived at available for the dependents would be Rs. 376-. In view of the evidence on record and the discussion by the learned Tribunal, we do not find any reason to interfere with the datum figure of Rs. 376/per month. We also do not find any reason to interfere with yearly income of Rs. 500/- from the agricultural income. We may make it clear that it cannot be said that there is a loss of income from agriculture of Rs.500/- per year, but it is a loss to the family members, i.e., dependents of the deceased whereby they will be required to incur

administrative expenses for agricultural purpose on demise of Dahyabhai. This amount is assessed towards the skillful services towards the agricultural activity. We do not find any reason to interfere with the same. Therefore, any excess sought by the learned advocate towards the pecuniary loss cannot be acceded to.

5. Mr. Patel also contended that the Tribunal has erred in holding deceased negligent to an extent of 15% for the cause of accident. Learned advocate for the Insurance Company, Mr. Mehta supports the finding of the Tribunal. If one reads the evidence and sees the situation which was there at the time of the accident, it becomes difficult to accept the negligence of the cyclist, i.e. the deceased. From the Panchnama it is clear, that both the vehicles, namely truck and bicycle were proceeding in opposite direction on their correct side. However, the truck had proceeded on its wrong side, i.e., on the correct side of the cyclist and had knocked down the cyclist who died instantaneously. We are not able to agree with the conclusion of the Tribunal that cyclist ought to have got down from the cycle or should have moved himself away on kachcha road when he found that truck was coming on his side. It was the duty of the driver of the truck to be on his side of the road. Driver of the truck had no right to go on the wrong side, more particularly in absence of any material on record that he was compelled to go on the wrong side. The driver of the truck had seen the cyclist coming from the opposite side. It appears from the Panchnama that the cyclist had gone on kachcha road and the truck had also reached the kachcha road on its wrong side and the correct side of the cyclist, and has knocked down the cyclist. In this fact situation, the conclusion arrived at by the learned Tribunal that the cyclist has contributed towards the negligence cannot be accepted. Therefore the Tribunal has erred in imposing negligence to the extent of 15% on the cyclist and the deduction to the extent of 15% from the amount awarded is required to be set aside.

6. Except this two contentions, no other contention is raised before us.

7. In the result, the appeal is partly allowed with proportionate costs. An amount of Rs. 9,774/- with proportionate costs and interest is awarded, in addition to the original award. The respondent No.4 Insurance Company is directed to deposit this additional amount with proportionate costs and compound interest at the rate of 6% from the date of application, within six weeks

before the Tribunal.

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(rmr).

TRUE COPY

(R.M. Ravindran)
Private Secretary
to the Hon'ble Judge
High Court of Gujarat
Ahmedabad